No. 94229-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CERTIFICATION FROM
THE UNITED STATES
DISTRICT COURT FOR
THE EASTERN DISTRICT
OF WASHINGTON

MARIANO CARRANZA and ELISEO MARTINEZ, individually and on behalf of all others similarly situated,

Petitioners/Plaintiffs,

v.

DOVEX FRUIT COMPANY,

Respondent/Defendant.

ANSWER TO AMICUS BRIEFS OF WASHINGTON STATE TREE FRUIT ASSOCIATION AND WASHINGTON TRUCKING ASSOCIATIONS

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I. INTRODUCTION

Plaintiffs Mariano Carranza and Eliseo Martinez and a proposed class of Dovex Fruit Company employees ("the workers") simply ask to be paid for all their work time. Dovex has refused to pay the workers for time spent attending meetings and trainings, traveling from one orchard to another during the work day, transporting ladders to and from a company trailer, and waiting for equipment. Instead, the employer has taken piece-rate pay the workers earned during active production and used that pay to cover otherwise unpaid time worked.

In their amicus briefs, the Washington State Tree Fruit Association ("WSTFA") and the Washington Trucking Associations ("WTA") make three central arguments: (1) that by requesting to be paid for all non-production time, the workers are attacking piece-rate compensation; (2) that Washington law permits an employer to refuse to pay for certain work time so long as the employer pays a workweek average of minimum wage; and (3) that a ruling entitling employees to separate pay for non-production time will negatively impact the industry and workers.

Each of these arguments is mistaken. Washington courts and the Department of Labor and Industries ("DLI") have consistently recognized that Washington employers must pay employees for all work time, and this Court has recognized that a piece rate is earned only during work time

in which an employee is "actively producing." *Lopez Demetrio v. Sakuma Brothers Farms, Inc.*, 183 Wn.2d 649, 652, 355 P.3d 258 (2015). The question here, therefore, is the scope of activities that are part of "active production" and those that are not. WTA and WSTFA repeatedly suggest the workers seek separate pay for active production activities such as climbing up and down ladders, walking between trees, and emptying fruit into bins. These suggestions are false. Since the beginning of this case, the workers have consistently stated they seek separate pay only for uncompensated work performed "in addition to" piecework, not for active production work that is already paid on a piece-rate basis.

Pursuant to RAP 10.3(f), the workers will not address every argument made by WTA and WSTFA. They limit their discussion to the three central arguments identified above. For the reasons stated below, this Court should reject the industry's misleading arguments and hold the Minimum Wage Act ("MWA") requires employers to pay workers separately for work time during which they are unable earn a piece rate.

II. ARGUMENT

A. The workers are not attacking piece-rate pay.

WTA asserts that the workers are attacking the very notion of piece-rate compensation. *See* WTA Amicus Br. at 1, 2. This argument is a red herring. The workers do not oppose the payment of piece-rate wages

for piecework activities. This case is not about such work. Rather, it is about the right to be paid for time spent performing non-piecework activities—work time during which employees cannot earn a piece rate because their employer has required them to do other work. The workers simply ask the Court to confirm that an employer must pay no less than minimum wage for non-production work.

A piece rate "is earned only when the employee is actively producing." *See Lopez Demetrio.*, 183 Wn.2d at 652. Consequently, "it has become common practice among WSTFA's members [that pay on a piece-rate basis] to compensate workers at a separate hourly rate" for training, weather delays, and "significant travel time after the work day has commenced." WSTFA Amicus Br. at 6. WSTFA admits "all of these events can be tracked and recorded on a crew-wide basis with relative ease." *Id.* Therefore, a decision requiring pay for non-production time will not end piece-rate compensation.

The industry's argument is based on a false characterization of the workers' position. Specifically, WSTFA wrongly suggests the workers seek separate pay for "individualized micro-units of so-called nonproductive time," like "moving ladders from tree to tree." WSTFA Amicus Br. at 7. WSTFA also incorrectly suggests the workers seek separate pay for approximately 70% of their work time, stating "it is

estimated that as little as 30% of an apple picker's time is spent picking apples." WSTFA Amicus Br. at 4 & n. 12. The report on which WSTFA relies for this figure focuses solely on active production work: "when apple pickers are in the orchard, only 30 percent of their time is spent picking *with the rest of their time spent positioning ladders, climbing ladders, and unloading bags of fruit*." Linda Calvin & Phillip Martin, The U.S. Produce Industry and Labor, USDA Econ. Research Report No. 106 at 18 (Nov. 2010), https://www.ers.usda.gov/webdocs/publications/44764/8069_err106.pdf?v=41056 (emphasis added) (last visited Aug. 15, 2017).

Here, the workers do not seek separate pay for time spent positioning ladders at trees, climbing ladders, or unloading bags of fruit. Contrary to WTA's argument, they also do not seek pay separate from the piece rate for time spent walking from tree to tree, walking in between rows, and moving ladders from tree to tree. Such activities are part of the active production work during which a piece rate is earned. *See Lopez Demetrio*. 183 Wn.2d at 652. Indeed, if an apple picker moves more efficiently from tree to tree, up and down a ladder, and from the tree to the apple bin, the picker can increase his or her piece-rate pay.

Instead, the workers in this case seek to be paid for work time during which they cannot earn a piece rate because their employer has

required them to do *other work*. *See* Plaintiffs' Opening Brief on Certified Questions at 3–4; Plaintiffs' Reply Brief on Certified Questions at 1–2.[1] Ignoring this, WTA asserts the workers' proposed rule "leaves many unanswered questions . . . ." WTA Amicus Br. at 13. But the questions WTA poses can be answered by this Court:

- "Do employees get paid hourly for going up and down ladders to pick the fruit and put them into bins?" *Id.*
    - **No.**
- "Do employees get paid separately and hourly when they are walking from tree to tree?" *Id.*
    - **No.**
- "What types of activities are included in the piece rate and what must be paid hourly?" *Id.*
    - A piece rate "is earned only when the employee is actively producing." 183 Wn.2d at 652. The types of activities included in the piece rate include activities during which an employee can increase his or her piece rate by working more efficiently. For the apple pickers here, the piece rate covers all time spent moving ladders from tree to tree, climbing up and down ladders, picking apples, emptying the apples into bins, returning to the tree, and all other work time during which an employee is *able* to earn a piece rate. The activities that must be separately paid are those during which workers have no ability to increase their pay because no piece-rate pay accrues—including attending meetings, trainings, and orientations; traveling from one orchard to another during the work day; waiting time required by the

[1] The workers' complaint explicitly states the basis of their claim is that "Dovex has failed to pay piece-rate migrant and seasonal workers for work performed *in addition to* their piecework." Dkt. 39 at 3 & Ex. 1 at 10 (emphasis added).

employer; and transporting ladders to or from the company trailer.

In sum, the workers' position is not an attack on piece-rate pay. To the contrary, the workers want to continue earning piece-rate pay without their employers taking part of that pay to offset compensation due for otherwise unpaid work time. The dividing line the workers propose between "active production" time and work time during which it is impossible to earn piece-rate pay presents a clear and logical distinction for determining when non-piecework time must be separately paid.

B. WTA and WSTFA misstate Washington law and the position of DLI.

1. This Court adopted the per-hour measure for minimum wage compliance for time periods in which workers otherwise receive no pay.

Washington employees are entitled to no less than minimum wage for all "hours worked." *Stevens v. Brink's Home Security, Inc.*, 162 Wn.2d 42, 47, 169 P.2d 473 (2007). For purposes of the MWA, this Court has adopted WAC 296-126-002(8)'s definition of "hours worked." *Id.* Under that provision, the phrase means "all hours during which the employee is authorized or required . . . to be on duty on the employer's premises or at a prescribed work place." WAC 296-126-002(8).

WSTFA concedes that "[w]hen work is performed on an hourly basis, of course each hour of work must be paid." WSTFA Amicus Br. at

9. But WSTFA asserts that low-wage farm workers paid on a piece-rate basis for certain hours worked do not have the right to be paid for other hours worked. *Id.* at 8 ("The Minimum Wage Act does not require non-hourly employees be paid for all time worked."). In other words, WSTFA suggests employers can require employees to perform hours of unpaid non-production activities each day so long as employers pay them on a "non-hourly" basis for any "productive" work. This is not the law in Washington. Indeed, DLI has stated the "pay basis is immaterial" to whether an employer must pay for all hours worked. Wash. DLI Admin. Policy ES.C.2 at 1. "If the work is performed, it must be paid." *Id.*

WSTFA incorrectly relies on this Court's decision in *Seattle Professional Engineering Employees Association v. Boeing Co.* ("*SPEEA*") for its statement that when work is performed on a non-hourly basis, the employee need not be paid for each hour worked. This Court reached the very opposite conclusion in *SPEEA*. *Seattle Prof'l Eng'g Emps. Ass'n v. Boeing Co.* 139 Wn.2d 824, 828–29, 835 n.6, 839–40, 991 P.2d 1126 (2000), *opinion corrected on denial of reconsideration* at 1 P.3d 578. In that case, the Court addressed whether salaried Boeing engineers were entitled to minimum wage (or their agreed rate) for orientation time during which they were working on a non-hourly basis, receiving no pay at all. *Id.* at 827. The Court held that because the engineers were not paid

anything for orientation time, they were entitled to separate compensation at no less than minimum wage for those hours. *Id.* at 835 n.6 ("Here, the employees were not paid at all for attending orientation; thus, no amount need be subtracted from their recovery."). Thus, the Court affirmed the trial court's decision, which had rejected workweek averaging and applied the per-hour approach for the unpaid orientation time at issue. *See id.* at 840; *Seattle Prof'l Eng'g Emps. Ass'n v. Boeing Co.*, Case No. 92-2-29005-7, 1995 WL 17873923, at 9 (King Cnty. Sup. Ct. Oct. 17, 1995).[2]

Even if WSTFA were correct that an agricultural pieceworker is not entitled to be paid for all time worked, a worker who is performing work during which a piece rate cannot be earned is *not a pieceworker during that work time*. Therefore, the worker must be separately paid during that time.

2. Washington law does not limit the scope of compensable hours based on industry customs.

Without citation to authority, WTA asks this Court to rely on "long

[2] WSTFA also takes a half-sentence quote from *SPEEA* out of context when it says *SPEEA* stated the MWA does not "provide any remedy for an employer's failure to pay an employee for all time worked." WSTFA Amicus Br. at 9 (quoting *SPEEA*, 139 Wn.2d at 834). This section of *SPEEA* concerns whether the MWA allows a claim at a workers' *regular wage* rate for straight time hours worked, or limits the claim to the *minimum wage* rate. Contrary to WSTFA's suggestion, the MWA certainly provides a remedy for an employer's failure to pay *any* wage for certain work time. *SPEEA*, 139 Wn.2d at 835 n.6 (recognizing employees were entitled to minimum wage for orientation time where they "were not paid at all for attending orientation"). Indeed, this Court explicitly held in *SPEEA* that the MWA requires an employer to pay the minimum wage for all straight time. *Id.* at 835.

tradition, custom, and practice within the agricultural and trucking industries" to hold that piece-rate pay compensates for non-production time. WTA Amicus Br. at 1–2. But more than a century ago, this Court rejected the argument that industry "custom" justifies the refusal to recognize certain non-productive travel, preparatory time, and concluding time as compensable work. *See Davies v. City of Seattle*, 67 Wn. 532, 533–35, 121 P. 987 (1912). Minimum wage laws are "not designed to codify or perpetuate those customs and contracts which allow an employer to claim all of an employee's time while compensating him for only a part of it." *Tennessee Coal, Iron & RR Co. v. Muscoda Local 13*, 321 U.S. 590, 602 (1944). Indeed, the protections of the MWA cannot be bargained away. RCW 49.46.090(1) ("Any agreement between such employee and the employer allowing the employee to receive less than what is due under this chapter shall be no defense to such action."); Wash. DLI Admin. Policy ES.A.5 at 1 (2002) ("RCW 49.46.020 is a minimum guarantee . . . for each hour of employment."). Despite any industry custom to the contrary, agricultural employers must separately pay for work time during which employees are unable to earn a piece rate.

WTA also asserts that Congress's enactment of the Portal to Portal Act in 1947 supports a ruling that would shield industry custom from

regulation.[3] But when it enacted the MWA in 1959, our state legislature chose *not to include* limitations on compensable hours like those in the federal Portal to Portal Act. *See Anderson v. State, Dep't of Soc. & Health Servs.*, 115 Wn. App. 452, 457, 65 P.3d 134 (2003) ("The MWA does not include language similar to the Portal to Portal Act."). Where Washington state law is more protective of workers than federal law, this Court must apply the state law. *See Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 298, 996 P.2d 582 (2000); Wash. DLI Admin. Policy ES.A.1 at 2 (2014) ("Employers must follow the laws that are more protective to the worker when there is a difference between the applicability of state and federal laws."); Wash. DLI Admin. Policy ES.A.7 (2002) (same).[4] Accordingly, the Court should reject WTA's invitation to follow less protective federal law and should instead apply the MWA's requirement that employers must pay no less than minimum wage for each hour worked outside of piecework.

[3] Notably, the agricultural industry group that submitted an amicus brief states the industry custom *is* to separately pay non-production time. WSTFA Amicus Br. at 6.

[4] This Court recently recognized that where a reasonable interpretation of a disputed standard of employment law "provides greater protection for workers, it is more in tune with other Washington case law addressing employee rights" and should be adopted. *Brady v. Autozone Stores, Inc.*, 397 P.3d 120, 124 (2017).

3. In *Lopez Demetrio*, the Court rejected the workweek averaging arguments that WTA and WSTFA make here.

WSTFA incorrectly suggests this Court endorsed workweek averaging in *Lopez Demetrio*. WSTFA Amicus Br. at 14. In *Lopez Demetrio*, this Court explicitly rejected the argument that workweek averaging could be used to compensate for rest break time, holding an "all-inclusive piece rate compensates employees for rest breaks by deducting pay from the [piece-rate] wages the employee has accumulated that day." *Lopez Demetrio*, 183 Wn.2d at 653. The same principle applies here because an all-inclusive piece rate compensates the workers for non-production hours only by deducting from the piece-rate wages the workers accumulate during active production.

Although this Court noted in *Lopez Demetrio* that employers perform a workweek calculation to determine minimum wage for "active production" time (time during which a piece rate can be earned), the Court did not endorse subsuming otherwise unpaid non-production time in that calculation.[5] *Id.* at 661 n. 3. To the contrary, this Court explicitly stated that for its example calculation, "[t]he employee has spent 38.6 hours

[5] WSTFA asserts "Plaintiffs argue that averaging is improper." WSTFA Amicus Br. at 12. This fails to accurately capture the workers' argument. The issue presented is whether non-production time must be separately compensated because piece rates cannot be earned during that time. The workers have no issue with workweek averaging calculations performed *after* the employer has paid for all non-production work time (including rest break time). *See Lopez Demetrio*, 183 Wn.2d at 659–61.

producing and 1.4 hours on breaks, for 40 hours of total work." *Id.* (emphasis added).[6] The very essence of this Court's opinion in *Lopez Demetrio* was that requiring workers to finance their own non-productive time (there, rest break time) using piece-rate pay was unlawful. WSTFA and WTA present no valid reason to depart from this analysis in the context of actual work time not paid on a piece-rate basis.

4. DLI does not allow employers to refuse to pay for hours worked during which a piece rate cannot be earned even if employers pay a workweek average of minimum wage.

DLI has long taken the position that "[t]he requirements of the Washington Minimum Wage Act are not satisfied if any hours of work are not compensated, even if the total wages paid for a workweek divided by the total number of hours worked yields an average wage greater than the minimum." Dkt. 34-2, Ex. 2 (1994 Declaration of DLI Employment Standards Program Manager Greg Mowat, submitted in *SPEEA*). WAC 296-126-021, which applies in the non-agricultural context, is not contrary to this position. That regulation provides that for non-agricultural employees who are paid at least in part on a "piecework basis," the "amount earned *on such basis* in each work-week period may be *credited as part* of the total wage for that period," and the "total wages for such period shall be computed on the hours worked in that period resulting in

[6] Again, in footnote 4, this Court explicitly referenced 38.6 "total hours *in active production*." *Lopez Demetrio*, 183 Wn.2d at 661 n.4 (emphasis added).

no less than the applicable minimum wage rate." WAC 296-126-021 (emphasis added). Nothing in the regulation permits an employer to refuse to pay workers for work that is not performed on a "piecework basis"—such as attending meetings or travel time. Indeed, the regulation explicitly provides that the "amount earned on [a piecework] basis" is credited only "as a part" of the total wage, which indicates DLI expected employers to separately pay for other time worked at no less than minimum wage. Once piecework pay is added together with pay for other time worked, the subsection (2) calculation is performed to ensure the employer paid no less than minimum wage for piecework time.[7]

WSTFA attempts to distinguish DLI's *SPEEA* declaration and this Court's *SPEEA* opinion by saying the *SPEEA* engineers were *hourly* employees. WSTFA Amicus Br. at 12. But the SPEEA employees were *not hourly employees*; they were paid on a *salary* basis. *See Seattle Prof'l Eng'g Emps. Ass'n v. Boeing Co.*, Case No. 92-2-29005-7, 1992 WL 12598757 (King Cnty. Sup. Ct. Dec. 15, 1992) (Complaint) (quoting "hire letter" stating "[t]he beginning annual salary will be $ [amount], based on a standard work year of 2,088 hours"). The argument that DLI limits the

[7] Notably, DLI articulated the position that all work hours must be compensated regardless of workweek averaging twenty years after the promulgation of WAC 296-126-021. Dkt. 34-2, Ex. 2 (declaration dated September 27, 1994). And in the twenty-three years *since* DLI stated this position, the agency has not issued an administrative policy contradicting it.

requirement to pay for all time worked to hourly employees is wrong. Later DLI policies explicitly confirm the requirement to pay for all hours worked and do not limit that requirement to hourly workers. Wash. DLI Admin. Policy ES.C.2 at 1 ("The reason or pay basis is immaterial.").

WSTFA and WTA's reliance on *former* DLI publication F700-171-000 [01-2014] is also misplaced. WSTFA Amicus Br. at 13–14; WTA Amicus Br. at 12 (same). This publication was removed from DLI's website in 2015, likely to avoid a misinterpretation that an employer could refuse to pay pieceworkers for work time during which a piece rate could not be earned. *See* Dovex's Statement of Add'l Auths. (July 28, 2017). Even if it were current, the publication (1) is not legal authority, (2) does not address minimum wage requirements for periods in which an employee is *not working on a piece-rate basis* (e.g. while traveling to another orchard, waiting for equipment, or attending a meeting), and (3) does not instruct farm workers to use workweek averaging to determine whether they were properly paid during such periods.[8]

WTA also incorrectly asserts that Dovex's practice of not compensating non-piecework hours and ensuring only a workweek average of minimum wage "is recognized in DOLI policy and guidance

[8] Sakuma Brothers Farms, Inc. relied heavily on this publication to support workweek averaging, and this Court rejected Sakuma's position. *See* Sakuma Brothers Farms, Inc.'s Responsive Brief on Certified Questions at 11–14, *Lopez Demetrio v. Sakuma Brothers Farms, Inc.*, 183 Wn.2d 649 (2015) (No. 90932-6).

documents." WTA Amicus Br. at 12 (citing DLI publication F700-171-000 [01-2014] & Admin. Policy ES.A.3 (2014)). Nowhere in ES.A.3 does DLI contradict the position set forth in the 1994 declaration. The policy does not address whether an employer may refuse to pay for certain hours worked. The "workweek averaging" discussion explicitly states that for employees paid on a "piecework basis," the "piecework earnings earned in each workweek are credited toward the total wage for the pay period." Wash. DLI Admin Policy ES.A.3 at 2. This anticipates separate pay for *non-piecework hours* will also be "credited toward" the total wage.

Finally, DLI did not file an amicus brief disagreeing with the workers' position, and the Attorney General submitted a brief stating "[t]o protect agricultural pieceworkers, this Court should construe RCW 49.46.020 to require separate hour-by-hour compensation for non-piecework time." *See* Amicus Br. of Attorney General at 9 (Jul. 31, 2017).

5. WTA and WSTFA rely on inapposite case law and irrelevant federal sources.

WTA cites a series of inapposite cases in an attempt to find support for its position. None are on point. For example, *Inniss v. Tandy Corp.* did not involve a failure to pay for straight time hours worked. 141 Wn.2d 517, 523–24, 534, 7 P.3d 807 (2000). Rather, it concerned the "regular rate" that must be paid under RCW 49.46.130 for *overtime* calculations for *salaried* employees with a fluctuating workweek. *Id. Westberry v.*

Interstate Distributor Co. concerned whether certain truck drivers were exempt from the MWA's *overtime* pay provision by virtue of their employer's payment of compensation "reasonably equivalent to one-half the driver's usual base rate of pay." 164 Wn. App. 196, 201, 263 P.3d 1251 (2011). *Mynatt v. Gordon Trucking, Inc.* involved the same "reasonably equivalent" overtime issue for truck drivers.[9] 183 Wn. App. 253, 257, 333 P.3d 442 (2014). These cases are not relevant to the question presented here: whether an *agricultural* employer must pay for *straight-time* hours during which workers perform work activities outside of piece-rate picking work.

WSTFA relies on the Washington Farm Labor Contractor Act ("FLCA") and the federal Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") for the quoted proposition that "[p]iece rate pay compensates the employee for all hours of work recorded during a day in which piece rate work was performed." WSTFA Amicus Br. at 6. This quote is not found in FLCA or AWPA. The source of the quote is unclear, but it appears to come from an employer's statement to employees that it will use piece-rate pay to compensate for all work time, including time when a piece rate cannot be earned. Under *Lopez Demetrio*, such an "all-inclusive" approach is unlawful. *Lopez Demetrio*, 183 Wn.2d at 653.

[9] Despite the long hours they work in difficult conditions, farm workers are exempt from overtime. RCW 49.46.130(2)(g).

Finally, WSTFA and WTA rely on two unpublished federal district court orders to support their workweek averaging argument. WTA Amicus Br. at 12; WSTFA Amicus Br. at 15 (citing *Helde v. Knight Transp., Inc.*, 2016 WL 1687961 (W.D. Wash. Apr. 26, 2016), and *Mendis v. Schneider Nat'l Carriers, Inc.*, 2016 WL 6650992 (W.D. Wash. Nov. 10, 2016)). As the district court in this case recognized, "the regulations at issue there do not apply to agricultural workers." Dkt. 38 at 7 n. 3 (citing WAC 296-126-001). Even if WAC 296-126-021 were applicable here, the *Helde* decision ignores the language of subsection (1) of the regulation and relies entirely on subsection (2) in concluding that pure workweek averaging (without payment for non-production hours worked) is permissible. *See* 2016 WL 1687961, at *1–2. *Mendis* provides no substantive analysis of the language of WAC 296-126-021 at all; it simply relies on the conclusion in *Helde*. 2016 WL 6650992, at *3. These unpublished orders are not on point and in error.

C. Confirming that employers must pay workers for non-piecework hours will protect workers and clarify the law.

Piece-rate pay is intended to reward productivity. This benefit is lost when employers deduct from employees' piece-rate pay to compensate for employer inefficiencies that give rise to non-productive work time. Notably, it is the employer, not the employee, that has the ability to reduce non-productive work time. The workers have no control

over this time. By requiring pay for work time during which workers are unable to earn a piece rate, this Court will encourage employers to reduce inefficiencies and increase productive work time. *See* Amicus Br. of Washington Wage Claim Project & Washington Employment Lawyers Association at 7–10. This will result in higher pay for workers and more productivity for employers. *See* id at 8–9. By contrast, if an employer does not have to separately pay for non-production work, "the employer has little or no incentive to reduce inefficiencies in non-production work." *Id.* at 8.

Answering "yes" to the first certified question will ensure workers receive pay for work time during which they are unable to earn a piece rate. There is no evidence that such a requirement will be thwarted by reduced piece rates. Sakuma Brothers Farms made the same economic policy argument before this Court in 2015, and neither WSTFA nor WTA have shown that this Court's decision resulted in lower piece rates. Other economic pressures prevent reductions in piece rates. Labor "shortages have put pressure on farmers to find ways to attract and retain a reliable and productive workforce." WSTFA Amicus Br. at 1. Cynically reducing piece rates to cover separate pay required by the MWA for non-production time is therefore unlikely to occur.

Finally, WTA asserts that complying with the law would be too "complicated" and "next to impossible" if this Court agrees with the workers' position. (WTA at 6, 13). To the contrary, WSTFA admits employers already can and regularly do pay for the non-piecework activities at issue. WSTFA Amicus Br. at 6. Indeed, Dovex itself now claims to track and pay for this work time. A ruling that requires separate pay for such work time will help workers, enhance efficiency and productivity, and clarify the law for all employers.

III. CONCLUSION

As it did in *Lopez Demetrio*, this Court should reject the industry's argument for an all-inclusive piece-rate system that requires employees to finance their own unpaid work time using piece-rate pay earned only during active production. The workers respectfully ask that this Court answer "yes" to the first certified question and hold that employers must separately pay for non-production work time at a rate no less than the hourly minimum wage.

RESPECTFULLY SUBMITTED AND DATED this 25th day of August, 2017.

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